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INDIAN CONSTITUTIONAL REFORMS

SUMMARIES

OF

REPORTS

THE FRANCHISE COMMITTEE

AND

THE COMMITTEE ON DIVISION OF FUNCTIONS

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Summary of the Franchise Committee's Report.

PROVINCIAL COUNCILS.

The committee recommend the retention of the existing general disqualifications of electors and the addition of a further disqualification based on nationality which would not, however, apply to subjects of Indian States. They decided that the social conditions of India make it premature to extend franchise to women.

2. It is proposed that the general franchise should be based on residence within the constituency and the possession of certain property qualifications as evidenced by the payment of land revenue, rent or local rates in rural areas, and of municipal rates in urban areas, and of income tax generally. An important exception to these general principles is the recommendation to enfranchise all retired and pensioned officers of the Indian Army. No attempt has been made to arrive at any uniform property qualification. The qualifications proposed vary not only from province to province; but also, in some cases, in different areas within the same province An important point is that the same qualification is proposed for all communities within the same area.

3. The number of electors, which the franchise proposed for the various provinces will give, is roughly estimated as follows:—

Madras	542,000
Bombay	653,000
Bengal	1,228,000
United Provinces	1,483,500
Punjab	237,000
Bihar and Orissa	576,000
Central Provinces	159,500
Assam	300,000

It is proposed to replace the existing system of indirect election to the provincial legislative councils by a system of direct election. The district will ordinarily be the electoral unit but in some provinces single cities with large populations and in other provinces smaller towns in groups will form urban constituencies. Single member constituencies are generally recommended but some latitude is left to local Governments in this matter The committee are opposed to the introduction of elaborate systems of voting, such as proportional representation, the limited vote and the cumulative vote They recommend that plural voting should be forbidden except where a constituency returns more than one member in which case each elector will have as many votes as there are members Electors will also be allowed to vote in one general or communal constituency in addition to voting in a special constituency.

4. The average number of electors in the general and communal constituencies in the various provinces is estimated to be as follows:—

Madras	7,200
Bombay	8,900
Bengal	16,400
United Provinces	17,700
Punjab	4,900
Bihar and Orissa	9,100
Central Provinces	3,400
Assam	9,700

The size of individual constituencies will, however, vary enormously, from 500 electors in the Muhammadan constituency composed of the towns of Madura, Trichinopoly and Srirangam to 96,000 in the constituency of Almora in the United Provinces.

5. The size of the council which the Committee recommend for each province is as follows :—

Madras	118
Bombay	111
Bengal	125
United Provinces	118
Punjab	83
Bihar and Orissa	98
Central Provinces	70
Assam	53

In the presidencies and the United Provinces the proportion of elected members proposed is from 78 to 80 per cent. of the total membership, and in the remaining four provinces from 73 to 75 per cent. The proportion of officials proposed is 15 per cent. in the United Provinces, 16 per cent. in the three presidencies and Bihar and Orissa, 17 per cent. in the Central Provinces and Assam and 19 per cent in the Punjab. The interests to be represented by nomination are :—

(*i*) the depressed classes in all provinces, except the Punjab;

(*ii*) Anglo-Indians in all provinces, except Madras and Bengal, where representation will be by election ;

(*iii*) Indian Christians in all provinces, except Madras, where they will have a special electorate, and the Central Provinces ;

(*iv*) labour in Bombay, Bengal, Bihar and Orissa and Assam ;

(*v*) excluded tracts in Madras and the Central Provinces ;

(*vi*) military interests in the Punjab ;

(*vii*) (*viii*) (*ix*) } industrial interests other than planting and mining, aborigines and domiciled Bengalis, all in Bihar.

The number of nominated non-official members proposed varies from 4 in Bengal and the United Provinces to 9 in Bihar and Orissa and Assam.

6. Special electorates are proposed for the following interests :—

(*i*) universities, in all provinces, except Assam ;

(*ii*) landholders and
(*iii*) commerce and industry, } both in all provinces.

The number of landholding members varies from 2 in Assam to 7 in Madras and of representatives of commerce and industry from 2 in the Punjab and the Central Provinces to 15 in Bengal. In the representation of commerce and industry the following special interests share,

(*i*) planting in Madras, Bihar and Orissa and Assam ;

(*ii*) mining in Bengal, Bihar and Orissa and the Central Provinces ;

(*iii*) European Chambers of Commerce in Madras, Bombay, Bengal and the United Provinces ;

(*iv*) Indian Chambers of Commerce in the same four provinces ;

(*v*) Trades' Associations in the three presidencies ;

(*vi*) & (*vii*) Millowners' Association and cotton trade in Bombay ;

(*viii*) (*ix*) (*x*) & (*xi*) the jute trade, the tea trade, Indian Associations and Inland Water Transport Board in Bengal ;

(*xii*) general industrial interests in the Punjab, Bihar and Orissa, Central Provinces and Assam.

7. The extension of a system of communal electorates is proposed in the interests of (1) Indian Christians to whom three seats are given in Madras ; (2) Anglo-Indians who are given one seat each in Madras and Bengal ; (3) Europeans who are given two seats in Bombay and Bengal and one seat in Madras, the United Provinces and Bihar and Orissa ; and (4) Sikhs to whom eight seats are given in the Punjab. In the case of Muhammadans, the existing system of communal election is retained and following the Congress-League agreement the committee propose to give Muslims the following proportion of Indian elected seats :—

Madras	15 per cent.
Bombay	34 „ „
Bengal, ...	40 „ „
United Provinces..	30 „ „
Punjab	50 „ „
Bihar and Orissa	25 „ „
Central Provinces...	14 „ „

The claims to separate electorates of the following minor communities are not supported : Mahishyas of Bengal and Assam, Marwaris of Calcutta, Bengali domiciled community of Bihar and Orissa, Ahoms of Assam, Mahars of the Central Provinces, Uriyas of Madras and Parsis of Bombay. The majority of the committee would also reject the claims of the Mahrattas. In regard to non-Brahmans of Madras, the committee observe that they were deprived of the opportunity of examining the non-Brahman leaders and of testing their views since they refused to appear before the committee. The communications from Dr. Nair and other non-Brahman leaders are included in an appendix (XV) to the report. The committee regret that the refusal of these leaders to appear at the enquiry made a settlement by consent impossible. They considered certain solutions of the non-Brahman problem ; but in the end decided to make no difference between Brahmans and non-Brahmans ; but they add a suggestion that the matter may be further considered hereafter if the non-Brahmans make a move.

8. Few changes are proposed in regard to the qualifications of candidates.

The most important are :—

(1) the removal of the disqualification of subjects of Indian States ;

(2) the limitation of the disqualifications of dismissal from Government service and imprisonment ;

(3) the withdrawal of the Governor's power to declare the election of a candidate as contrary to public interests ; and

(4) the addition of a new qualification of residence within the constituency in the provinces of Bombay, the Punjab and the Central Provinces.

The Indian Legislature.

9. The committee recommend that the Assembly should have a total strength of 120 members, or including the Governor General in Council 121.

80 members should be elected, distributed among various provinces as follows:—

Madras	12
Bombay	12
Bengal	13
United Provinces	12
Punjab	9
Bihar and Orissa	9
Central Provinces	5
Assam	3
Burma	4
Delhi	1

Of these 80 members 36 will represent general non-Muslim interests, 19 general Muslim interests, 1 general Sikh interests, 5 non-Muslim landholding interests, 4 Muslim landholding interests, 1 Sikh landholding interest, 6 European commerce and planting and 4 Indian commerce. To these will be added 14 members appointed by nomination and 26 officials. The committee hold that a system of direct election is not feasible, except in the cases of the landholding and commercial interests, and recommend that the general representatives should be returned by the non-official members of the provincial legislative councils voting on a communal basis.

Council of State.

10. It is proposed that the Council-of State should consist of 56 members, exclusive of the Governor-General, of whom 24 should be elected. The 24 elected seats are distributed as follows:—

General	11
Muhammadans	7
Sikhs	1
Landholders	2
European Chamber of Commerce	2
Burma	1

The elected members, with the exception of the two representatives of European commerce, will be returned by the non-official members of the various provincial councils, the distribution of seats among the provinces being as follows:

Madras	3
Bombay	3
Bengal	3½
United Provinces	3
Punjab	3
Bihar and Orissa	2½*
Central Provinces	1½†
Assam	1½†

* One land holding seat to be filled alternately from Bengal and Bihar and Orissa.

† One Muhammadan seat to be filled alternately from the Central Provinces and Assam.

C4HD—1,200—2-5-19—GOPS

Summary of the Report of the Committee on Division of Functions.

The report is in six sections. The important sections are no. II, which deals with provincial functions and relations between the provinces and the Government of India, no. III in which the transfer of functions and the powers of the Governor in Council in relation to transferred subjects are discussed, and nos. IV and V in which proposals regarding the Public Services and Finance respectively are put forward. Much of the report does not lend itself readily to summary being of a technical and complicated nature but the main proposals can be briefly described.

2. *Section II.*—The committee have prepared two lists showing (*i*) all-India subjects and (*ii*) provincial subjects. Among the most important subjects proposed for inclusion in the all-India list are, naval, military and aerial matters, foreign relations and relations with native states, railways (with certain exceptions), communications of military importance, posts and telegraphs, currency and coinage, sources of imperial revenue, law of status, property, civil rights etc., commerce, shipping and major ports, criminal law, central police organization and railway police, possession and use of arms, central institutions of scientific and industrial research, ecclesiastic administration and all-India services. In the provincial list the most important items are local self-government, medical administration and education, sanitation, education (with certain exceptions), provincial buildings, communications other than those of military importance, light and feeder railways in certain cases, irrigation and canals, land revenue administration, agriculture, civil veterinary department, fisheries, co-operative societies, forests, excise, administration of justice, development of industries, police, prisons and reformatories, control of newspapers and presses, provincial borrowing.

3. The provincial subjects will be divided into reserved and transferred, and it is proposed that the powers of the Government of India in regard to provincial subjects should vary according to this division. The committee recommend that intervention in transferred subjects should be allowed only for two purposes, *viz.*:—

(1) To safeguard the administration of all-India subjects.

(2) To decide questions arising between two or more provinces, failing agreement between the provinces concerned.

In respect, however, of certain special subjects they retain a certain power of control in the hands of the Government of India by making the subjects "provincial subject to Indian legislation." In the case of reserved subjects the committee recognise that no specific restrictions can be imposed on the Government of India's general powers of control, but feel that the control should vary according as the subjects are administered by provincial governments as agents of the Government of India or as provincial functions properly so called. In respect of the former the Government of India's powers of control must remain absolute, but in regard to the latter they propose to secure that the Governor General in Council shall exercise his power of control with due regard to the purpose of the new Government of India Act.

4. The general effect of the proposals will be to leave the provinces free to legislate on provincial subjects, reserved and transferred, which are not specially made subject to Indian legislation, except in cases where the proposed Bills affect powers expressly reserved to the Government of India by statute, or amend any provision of certain specified all-India Acts, or amend any section of an Act which by the terms of the Act itself is specially protected. They also propose that the Governor shall have power to reserve for the consideration of the Governor General provincial Bills which appear to him to affect any matter specially committed to his charge, any all-India subject or the interests of any other province, and shall be required similarly to reserve Bills

which affect the religion or religious rights and usages of any class, university Bills, Bills shifting boundaries of reserved and transferred subjects, and railway or tramway Bills.

5. *Section III.*—The committee preface their discussion of the transfer of subjects with a statement of reservations which accompanied the proposals of local Governments. The Madras Government were wholly opposed to any scheme involving dualism, the Governments of Bombay and the Punjab and the Chief Commissioner of Assam proposed alternative schemes involving no division of functions and the Chief Commissioner of the Central Provinces desired a period of training before the introduction of the Report scheme. The most important subjects proposed for transfer are local self-government, medical administration and education, sanitation, education (with certain exceptions), provincial buildings, communications other than those of military importance, light and feeder railways and tramways (in certain cases), agriculture, civil veterinary department, fisheries (except in Assam), co-operative societies, forests in Bombay, Excise (except in Assam) subject to certain safeguards, and the development of industries. Mr. Couchman is unable to recommend the transfer of any subject in Madras as he feels that the proposals of the Franchise Committee will result in the return of a large majority of Brahmans, in whose hands the interests of the masses will not be safe.

6. The committee recommend that the Governor should be free to intervene in the administration of transferred subjects

(i) in defence of reserved subjects,

(ii) in defence of his special responsibilities under the instrument of instructions.

In cases of the former description if the Governor fails to get departments concerned to agree, he will himself decide the point in issue and will be empowered to call on the minister to resign in cases of necessity. If the case is an emergent one requiring immediate action, the Governor will be able to certify it as such, whereupon the Governor in Council will take action. Rules are suggested for regulating the relations between the two portions of the Government and defining the authority of the Governor. The gist of these is (1) each side is not to interfere unduly with the other, (2) the Governor shall decide which side has jurisdiction when that is in doubt, (3) the Governor shall see that all orders of the Governor General in Council are carried out, (4) the Governor shall call joint meetings in cases where reserved and transferred departments are concerned and shall decide in cases of disagreement, (5) the Governor in Council can administer a transferred subject in an emergency in the absence of a minister.

7. In defence of his special responsibilities under the instrument of instructions the Governor should have similar powers. Draft clauses defining the Governor's special responsibilities are included in the report: the matters covered by them are the maintenance of peace and tranquillity and prevention of religious and racial conflict, the grant of monopolies or special privileges to private undertakings contrary to the public interests and unfair discrimination in commercial and industrial matters, the protection of the interests of the Anglo-Indian or Domiciled Community and of the public services, and the protection of the special educational interests of Muslims, religious institutions, and depressed and backward classes.

8. *Section IV.*—Public Services.

The committee recommend that the public services employed under provincial governments be classified into three divisions, namely, Indian, provincial and subordinate. The chief criterion will be the appointing authority. The Indian services will be recruited according to methods laid down in statutory orders by the Secretary of State and appointments to these services will be made by the Secretary of State, who will also fix rates of pay, sanction all new appointments, and secure pensions by statutory orders under the new Government of India Bill. The committee recommend that statutory rules should provide that no orders affecting adversely emoluments or pensions shall be passed in regard to officers of all-India services in transferred departments with-

out the concurrence of the Governor. As a special measure of protection in the case of the Indian Medical Service they propose that if the medical department is transferred, statutory orders should provide that the private practice of officers of the Indian Medical Service will be regulated only by the Secretary of State. They further recommend that the Governor should be charged with the protection of the public services and with the duty of seeing that no orders affecting adversely the pension or emoluments of any officer are passed before they have been considered by both parts of the government. Appeals against such orders should lie to the Government of India and Secretary of State, and no officer of an all-India service should be liable to dismissal except by order of Secretary of State. Questions of promotion, posting and discipline of officers with duties in both reserved and transferred departments should be treated in the manner explained above in connection with the relations of Governor in Council and ministers.

Provincial Division: pending legislation which will regulate recruitment, training, discipline, and the general conditions of service of the provincial services, it is proposed that the existing rules should *mutatis mutandis* be binding on ministers as regards transferred departments. In regard to pay, allowances, leave etc., local Governments will be granted wide powers In the matter of discipline the main features of the procedure proposed for all-India services should apply to existing members of provincial services. In case of future entrants all orders affecting emoluments and pensions, and orders of dismissal, should require the personal concurrence of Governor.

Subordinate Division: the rights and privileges of present incumbents should be maintained by means of directions to the Governor in Council as regards reserved subjects and instructions to the Governor in respect of transferred subjects. So far as future entrants are concerned the Governor in Council and Governor and ministers must be left to regulate the entire working of the services.

In conclusion the committee suggest that as far as possible members of all-India services should be secured in the benefits of the conditions under which they were recruited. The principle that alterations shall not press hardly on members of the services should be formally recognised in the future.

9. *Section V.*—Finance.

Under this head most important proposals are—

(1) that a strong audit system independent of the Governor in Council and ministers be established and that audit reports be laid before provincial legislatures;

(2) that provincial finance departments should be reserved and that in relation to transferred subjects the duties of the department should be to advise and criticise, final decision resting with the minister subject to assent of the Governor;

(3) that a list of taxes which local Governments may impose without previous sanction of the Government of India should be included in a schedule to be provided for by rule;

(4) that provincial governments should ordinarily borrow through the Government of India, but, subject to approval of that Government as to time and method of borrowing, should be free to borrow in Indian market in certain circumtances;

(5) that subject to certain simple regulations provincial governments should be left to their own responsibility in the disposal of their balances;

(6) that a schedule of municipal and local taxation should be prescribed by the Governor General in Council and previous sanction should only be required in case of tax not included in schedule.

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